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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,148	09/09/2005	Helmut Schweiger	A36473 PCT USA (071155.03)	6226
21003 7590 07/22/2008 BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498				
EXAMINER				
MILLER, BENA B				
ART UNIT		PAPER NUMBER		
3725				
NOTIFICATION DATE		DELIVERY MODE		
07/22/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DL.NYDOCKET@BAKERBOTTS.COM

Office Action Summary

Application No.

10/526,148

Applicant(s)

SCHWEIGER ET AL.

Examiner

Bena Miller

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-54 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 30-54 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date 6/06/05/8/25/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 30, the claim is indefinite because it is not clear whether the catch device has a funnel-shaped configuration. The claim recites the catch device of "preferably funnel-shaped configuration".

Information Disclosure Statement

The information disclosure statement filed 08/25/06 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered. Applicant's attention is directed to the lined through references on the IDS submitted. Also, it should be noted the NPL cited does provide an English language translation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30, 32, 37, 39, 41, 43, 44 and 46-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Rietz (US Patent 2,082,419).

The device of Rietz meets the elements of the claimed invention including a comminution chamber (fig.1), a rotationally drivable drive shaft (11), at least one comminution element (19), a plurality of additional comminution elements (fig. 1, 19; Note, located near element 27), at least a portion of the circumferential wall is configured as a grating (fig. 1, 24), a funnel-shaped catch device (combination of 7, 38, 37 and 39), an outer jacket (2), an opening adjacent to the bottom wall (the unscrewing of plate 33 via 34; it should be noted the opening of plate 33 will allow a discharge of material from the device), an impact comminution element member (19), a charge opening (44) and a supply passage (the space directly below hopper 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31, 42 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rietz.

Rietz teaches most of the elements of the claimed invention except for vertically extending grating members, a hexagonal drive shaft and speed and optimal speed of the drive shaft between about 200rpm and about 2,000rpm and about 500rpm and about 1,000rpm. Rietz teaches gratings 24 and 39 located in the device for reducing the material. It would have been obvious to one of ordinary skill in the art to provide the device of Rietz with vertically extending grating members for the purpose of providing a greater impact when reducing material. Further, it would have been considered a mere design choice to use a hexagonal drive shaft for the device of Rietz and to have the speed and optimal speed of the drive shaft between the claimed range for the purpose of producing finely reduce particle materials from the device.

Claims 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rietz in view of GB1572330.

Rietz teaches most of the elements of the claimed invention except for a swingable outer jacket and grating. This problem is solved by a similar device including a polygonal contour shape outer jacket (35) wherein a grating (43) is disposed in outer jacket. Both the outer jacket and grating are swingable. See figure 2. It would have been obvious to incorporate a swingable polygonal contour shape outer jacket and a grating as suggested by GB1572330 in the device of Rietz for the purpose of providing quicker access to the housing when changing the grating.

Claims 38, 45, 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rietz in view of RU2072262.

Rietz teaches most of the elements of the claimed invention except for a chain comminution element, an annular attachment, a drive belt and a connection opening. This problem is solved by providing a similar device including a grinder having a chain comminution element (Abstract, line 12), an annular attachment (the attachment above element 18), a drive belt (fig.1) and a connection opening (16) incorporated therein. It would have been obvious to one of ordinary skill in the art to incorporate the claimed features, as suggested by RU2072262, in the device of Rietz for the purpose of reducing the particle size of materials.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rietz in view of Edberg (US Patent 4,637,561).

Rietz teaches most of the elements of the claimed invention except for a swingable impact member. This problem is solved by providing a similar device including a pivotable swingable impact member (Abstract, lines 4 and 5). It would have been obvious to one of ordinary skill in the art to incorporate a pivotable swingable impact member as suggested by Edberg in the device of Rietz for the purpose of reducing the particle size of materials.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bena Miller/
Primary Examiner, Art Unit 3725
July 6, 2008